

## Bureau of Indian Affairs, Interior

## § 15.101

other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her estate by will.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to or affirmed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ testator, and by \_\_\_\_\_ and \_\_\_\_\_, attesting witnesses.

\_\_\_\_\_  
(Title)

### § 15.10 What assets will the Secretary probate?

(a) We will probate only the trust or restricted land, or trust personalty owned by the decedent at the time of death.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty owned by the decedent at the time of death;

(2) Restricted land derived from allotments made to members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the lands and assets owned by a deceased member of the Five Civilized Tribes or Osage Nation who owned a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a Tribe other than the Five Civilized Tribes or Osage Nation.

[76 FR 7505, Feb. 10, 2011]

### § 15.11 What are the basic steps of the probate process?

The basic steps of the probate process are:

(a) We learn about a person's death (see subpart B for details);

(b) We prepare a probate file that includes documents sent to the agency (see subpart C for details);

(c) We refer the completed probate file to OHA for assignment to a judge or ADM (see subpart D for details); and

(d) The judge or ADM decides how to distribute any trust or restricted land and/or trust personalty, and we make the distribution (see subpart D for details).

### § 15.12 What happens if assets in a trust estate may be diminished or destroyed while the probate is pending?

(a) This section applies if an interested party or BIA:

(1) Learns of the death of a person owning trust or restricted property; and

(2) Believes that an emergency exists and the assets in the estate may be significantly diminished or destroyed before the final decision and order of a judge in a probate case.

(b) An interested party, the Superintendent, or other authorized representative of BIA has standing to request relief.

(c) The interested party or BIA representative may request:

(1) That OHA immediately assign a judge or ADM to the probate case;

(2) That BIA transfer a probate file to OHA containing sufficient information on potential interested parties and documentation concerning the alleged emergency for a judge to consider emergency relief in order to preserve estate assets; and

(3) That OHA hold an expedited hearing or consider ex parte relief to prevent impending or further loss or destruction of trust assets.

[73 FR 67278, Nov. 13, 2008, as amended at 76 FR 7505, Feb. 10, 2011]

## Subpart B—Starting the Probate Process

### § 15.101 When should I notify the agency of the death of a person owning trust or restricted property?

There is no deadline for notifying us of a death.

(a) Notify us as provided in § 15.103 to assure timely distribution of the estate.

(b) If we find out about the death of a person owning trust or restricted